BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 16th day of December 1970

*Present*:

Sri A. N. Sundara Murthy, B.A., B.L., *Presiding Officer*.

*Complaint No. 2 of 1968*

in

*Reference No. 77/67*

*Complainant*:

Siddiah, son of Deve Gowda, Employee, T. No. 20, Ryots Agricultural Produce Co-operative Marketing Society, Workshop, C/o N. L. Nagappa, Mandya.

*Vs.*

*Respondent*:

The Secretary, Ryots Agricultural Produce Co-operative Marketing Society Ltd., Mandya.

*Reference Government Order No. FCL 640 LLD 67, dated 17th October 1967.*

## AWARD

1. The complainant has filed the complaint before this Court under Section 33A of the Industrial Disputes Act complaining that the respondent has contravened the provisions of Section 33 of the Industrial Disputes Act. The complainant

was an employee of the respondent as a labourer in the workshop section on a monthly salary of Rs. 80 and he had put in four years of service. The respondent issued a memo dated 9th July 1968 alleging that the complainant was trying to take a vaskal clamp without a gate pass. Two days later the respondent called upon the complainant and told him to sign on a written paper. The complainant signed on the paper as per instructions of the respondent. The complainant submitted his explanation on 12th July 1968 stating that there is no truth in the allegations made against him. The respondent terminated the services of the complainant as per memo dated 13th July 1968 with effect from 4th July 1968. The respondent did not conduct any enquiry in regard to the charges made against the complainant. The action of the respondent in terminating the services of the complainant is one sided, *mala fide* and arbitrary. An industrial dispute was pending before this court and the respondent has not obtained approval of this court as required under Section 33 of the Industrial Disputes Act and the action of the respondent is in contravention of the said section. Hence it is illegal. It is prayed that the complainant may be reinstated with back wages.

2. On behalf of the respondent objection statement is filed as follows:—The Complainant was working in the agricultural implements workshop of the respondent. He was caught red-handed by one Bettachar, gate keeper on 3rd July 1968 while he was taking out a vaskal clamp in the gate without a gate pass. The complainant has accepted this fact on 3rd July 1968 itself in the gate when he was checked by the gate keeper. On 4th July 1968 the foreman suspended the complainant and reported the matter on 5th July 1968. On 8th July 1968 an explanation was called for from the complainant. In his application dated 9th July 1968 submitted by the complainant through the foreman he has accepted the theft and the charge and further requested the management to excuse him this time. In the interests of the institution and discipline the management on 13th July 1968 terminated the services of the complainant since the theft has been accepted by him. Application under Rule 61 (2) was also submitted to this court to approve the action taken by the respondent and one month's wages were paid to the complainant. The respondent has not contravened any of the provisions of the I. D. Act.

3. The first point for consideration is whether the dismissal is contrary to the provisions of Section 33 of the Industrial Disputes Act. It is admitted that the complainant was a workman of the respondent and his services were terminated on 13th July 1968. It is also admitted that on that day Reference No. 77/67 was pending before this Court and that dispute was between the workmen of the respondent and the respondent. In the said Reference the question of minimum basic wages and D.A. to be fixed for the workmen of the respondent was for consideration. It is admitted that the complainant in this case was a workman concerned in the said Reference. In view of this fact it was obligatory on the respondent to obtain approval of this court for the termination of the services of the complainant by filing an application under Section 33 (2) (b) of the Industrial Disputes Act. According to the respondent the respondent has complied with the provisions of Section 33 (2) (b) of the Industrial Disputes Act, by submitting an application to this Court on 14th August 1968. Fron the perusal of the from and to register of this court it is seen that no such application was received from the respondent after 14th August 1968. To substantiate that such an application was submitted to this court on behalf of the respondent one clerk of the respondent is examined as R.W. 3. He states that on 14th August 1968 he was working as a clerk of the respondent and he was maintaining from and to register as per Ex. R. 5. He states that Ex. R. 5 (a) is the relevant entry to show that he posted the letter mentioned therein. He has produced the copy of the letter as per Ex. R. 6. He states that the said letter was sent through express delivery post. Even granting that the original of Ex. R. 6 addressed to this court had been posted through express delivery as already stated there is nothing to show that the original of Ex. R. 6 was delivered at this office. Even after 14th August 1968 till the complainant filed his complaint on behalf of the respondent no efforts were made to find out whether the original of Ex. R. 6 had been received in this office or not after 14th August 1968. The respondent has failed to prove that the original of Ex. R. 6 was received in this court after 14th August 1968.

4. It is contended on behalf of the complainant that even granting that the respondent had sent an application as per the

original of Ex. R. 6 it would be seen that it does not comply with the provisions of Section 33 (2) (b) for two reasons namely one month's pay was not paid to the complainant and the application for approval was not filed simultaneously with the passing of the order of dismissal. On behalf of the complainant the decision in 1967 I LLJ 637 is relied upon.

5. In 1967 I LLJ 637 the dismissal order was made on 19th April 1963. A memorandum was issued to the petitioner concerned and it was not served on him till 24th April 1963. The application under Section 33 (2) (b) was not made till 29th April 1963. In the said case it is held by the Bombay High Court as follows:—

> "The dismissal order was made on 19th April 1963. The application under Section 33 (2) (b) could, therefore, have been prepared and made to the tribunal at or about the same time. It was not necessary to wait until the petitioner has been served. Even after he was served there was five days further delay in making the application which has not been satifactorily explained. On the facts of this case it cannot be said that the making of the application was part of the same transaction by which the petitioner was dismissed from service"

In this case as admitted the services of the complainant were terminated on 13th July 1968 and the application for approval is alleged to have been posted on 14th August 1968 *i.e.*, after the lapse of more than one month. The delay has not been satisfactorily explained. Hence it cannot be stated, relying on the principles laid down in the above said decision, that the making of the application was part of the same transaction by which the complainant was dismissed from service. Further no evidence at all has been let in to show that the complainant was paid one month's wages as required under the proviso to Section 33 (2) (b) of the Industrial Disputes Act. From these facts it is clear that the dismissal has been in contravention of Section 33 of the Industrial Disputes Act.

6. The next point for consideration is whether the dismissal is unjustified on merits. The charge against the

complainant is that on 3rd July 1968 he was caught red handed at the gate while he was taking away a vaskal clamp belonging to the respondent and thereby he committed theft and the complainant admitted the charge of theft. To prove the theft on behalf of the respondent Bettachar the maistry is examined as R.W. 1 and Syed Afroz Pasha who was working as a foreman at that time is examined as R.W. 2.

7. R.W. 1 states that on 3rd July 1968 he was working as a gate keeper of the rice mill; there is one gate for the workshop and the oil mill; on 3rd July 1968 at 5-40 or 6 P.M. he checked the complainant at the gate while he was going out; then he found in his bag one iron door clamp belonging to the respondent; he asked him to produce the gate pass; the complainant stated that he does not have a gate pass; thereafter he produced the complainant before the foreman with the property and gave a written report as per Ex. R. 2; the complainant also put his signature to Ex. R. 2 as per Ex. R. 2 (a)

8. R.W. 2 states that at the relevant period he was working as a foreman. He states that he received a report from R.W. 1 as per Ex. R. 2; thereafter he issued a memo as per Ex. R. 3; the complainant received a copy of it and in evidence of it he has put his signature on Ex. R. 3 as per Ex. R. 3 (a); on 4th July 1968 the complainant was produced before him with the door clamp M.O. 2 at about 8-30 A.M.; the respondent issued notice to the complainant as per Ex.P. 2; thereafter he gave an application to him as per Ex. R. 1; he forwarded it to the Secretary of the respondent as per Ex. R. 1 (b); Ex. R. 1 (a) is the signature of the complainant.

9. The complainant is examined as P.W. 1. He states that he was issued a suspension order as per Ex. P. 2. He is not a literate. No enquiry was held. Two days after the suspension order R.W. 2 took his signatures to some papers. He gave his representation as per Ex. P. 3; in spite of it no enquiry was held; he stated that R.W. 2 asked him to come to his house for work and he refused; therefore he has become hostile to him.

11. In spite of these facts on behalf of the respondent it is contended that the complainant himself has admitted before he filed the complaint petition that he committed theft of M.O. 2 and he has also settled his account with the respondent. The manner in which the complainant has admitted his guilt and the manner in which he has settled his claims would be sufficient to prove that he has committed theft of M.O. 2.

12. In the course of the evidence of R.M. 1 he states that the complainant has put his signature to his report Ex. R. 2 as per Ex. R. 2(a). In the course of the evidence of R.W. 2 it is got elicited that the complainant gave an application as per Ex. R. 1 and Ex. R. 1(a) is the signature of the complainant. The complainant has disputed that the signatures Ex. R. 1(a) and R. 2(a) are his. According to the complainant R.W. 2 asked him to come and work at his residence and he refused and on that account R.W. 2 became hostile to him and R.W. 2 had taken his signatures to some papers and according to the complainant R.Ws. 1 and 2 have joined hands and have got up Exts. R. 1 and R. 2. No doubt R.W. 2 has denied that he had at any time called upon the complainant to come and do work in his house. To come to the conclusion whether R.Ws 1 and 2 could have joined hands and got up Exts. R. 1 and 2, the facts and circumstances of the case will also have to be taken into consideration. It is not disputed that the complainant is not a literate and he is able only to put his signature. The body of Ex. R. 1 is definitely not in the handwriting of the complainant. It is not established who is the author of Ex. R. 1. R.W. 1 is the author of Ex. R. 2. As observed already there are number of discrepancies in the evidence of R. W. 1 and R. W. 2. If the complainant had committed theft of M.O. 2 as sought to be made out, I do not think there would have been such discrepancies in their evidence. In this case if really the complainant had committed theft of M.O. 2 as sought to be made out by R.Ws. 1 and 2 it is not explained why the other watchman who was present at the time of search was not examined. It is also not the case of the respondent that there were no other workers present at that time. It is also not explained why any one of them is not examined. In this case the conduct of the complainant should also be looked into. Immediately after he

received a show cause notice he has given his representation as per Ex. P. 3. It is dated 12th July 1968. In Ex. P. 3 he has denied that he committed theft as stated in the notice. In Ex. P. 3 at the earliest stage he has stated that the feelings between himself and R.W. 2 were strained and on that account a false report is given against him. In Ex. P. 3 he has also stated that R.W. 2 one day prior to Ex. P. 3 took him to his office and took his signature on one written document and that he is an illiterate. He states that whatever that was written therein was not read out to him. From these facts and circumstances of the case even granting that the complainant did put his signatures as per Exts. R. 1(a) and R. 2(a) that cannot be taken that he has signed those documents admitting his guilt. No doubt the complainant admits that he has given a letter as per Ex. R. 4. In Ex. R. 4 he states that his services had been terminated and that he has received his arrears of wages, provident Fund, etc., and no balance is due and in that behalf he has no dispute. On behalf of the respondent it is contended that in view of Ex. R. 4 it will be clear that the respondent has settled all the claims of the complainant and there is nothing more to pay him and he will not be entitled to reinstatement with back wages. The manner in which Ex. R. 4 is given even after he gave his reply as per Ex. P. 3 would go to show that the complainant must have given Ex. R. 4 under an erroneous impression and on that account it cannot be stated that the complainant is estopped from claiming reinstatement in this case. Taking all the circumstances in this case into consideration it appears to me that R.Ws. 1 and 2 must have joined hands and have got a case foisted on the complainant. From these facts it is clear that the dismissal of the complainant is not justified on merits as well. In view of this finding the complainant will be entitled to reinstatement. With regard to back wages, I am of opinion that taking all the facts and circumstances into consideration it would meet with ends of justice if 50 per cent of back wages are awarded to the complainant.

13. In the result I make an award directing the respondent to reinstate the complainant in his original post with contiunity

## GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

*Labour Dispute.*—Industrial Dispute between the workmen and the managment of Mysore Industrial and Testing Laboratory, Ltd., Malleswaram, Bangalore-3.

Award of the Additional Industrial Tribunal, Bangalore published.

Read the following papers :

(1) Letter No. 1024/70-71, dated 21st-22nd December 1970 from Sri S. T. Kulkarni, Presiding Officer, Additional Industrial Tribunal, Bangalore.

## BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

*Dated 21st December* 1970

Present :

Shri S. T. Kulkarni, B.A. (HONS), LL.B., .. *Presiding Officer.*

A.I.D. No. 18 of 1969

The workmen of Mysore Industrial and Testing Laboratory Ltd., represented by the Secretary, Mysore Industrial and Testing Laboratory Ltd., Registered Office Staff Union, Bangalore *First Party.*

*Vs*

The Management of Mysore Industrial and Testing Laboratory Ltd., Malleswaram, Bangalore-3 *Second Party.*

APPEARANCES

For the First Party—

Sri S. Krishnaiah, Advocate, Bangalore.

For the Second Party—

Sri B. R. Puttananjappa, Hon. Secretary, Mysore State Employers' Association, Bangalore.

# AWARD

By No. FCL 1110 LLD 68, dated 10th September 1969 the Government of Mysore have referred an Industrial Dispute existing between the workmen and the Management of Mysore Industrial and Testing Laboratory Ltd., Malleswaram, Bangalore-3 to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 on the following points of dispute :—

| Whether the workmen of the Mysore Industrial and Testing Laboratory Limited, Bangalore-3, are entitled to the following demands put forth by the M.I.T.L. Registered Office, Staff Union or to any other relief ?

**(1) Revision of Pay Scales with effect from 1st January 1967 : —**

| *Scales of pay* | *Existing* | *Demands* |
|---|---|---|
| A. Accountant | 200-15-260-20-460 | 250-20-450-30-750 |
| B. Deputy Acctt. | 120-10-200-15-350 | 150-15-300-20-500 |
| C. Cashier | ... | 130-10-260-15-380 |
| D. Accounts Asst. Senior Typists Jr Stenographer, Accounts Clerk | 100-5-140-10-210-15-300 | 120-10-200-15-350 |
| E. Cle k-cum Typists Jr. Clerk | 60-4-80-5-100-6-160 | 80-10-150-15-300 |
| F. Attenders | 30-3-45-4-85-5-100 | 50-5-100-8-180 |
| G. Peons & Orderlies | do | 40-4-80-5-100-6-160 |
| 2 Typing Allowance | Rs. 10 per month | Rs 20 per month |
| 3 Gratuity : | 15 years of service<br>15 days basic pay for each year of service | 10 years of service<br>1 month salary/wages for each completed year of service. |
| 4 *Acting Officiating and Inchage Allowance* — | 1 month period | 7 days period. |
| 5 *Cycle Allowance* | Rs. 10 per month | Rs. 20 per month. |
| 6 *Lunch Allowance* | | Rs. 2 per day to be paid if sent out on duty within City limits. |

| | | |
|---|---|---|
| 7 *Graduates Allowances* : | ... | 1 increment to be given in the grade for those who become graduates while in service besides being promoted to the grade applicable to graduates. |
| 8 *Cash handling Allowance* : | | Rs 4 per head for those asked to handle cash for disbursement of wages etc., |
| 9 *Uniforms* : | 2 sets of Khaki uniforms for peons and orderlies | 2 sets white clothes with one pair shoes per year for clerical Staff. 2 sets Khaki Clothes with one pair shoes per year for, Orderlies Peons and Attenders. |
| 10 *Weightage* : | Nil | 1 increment for every 3 years completed service. |

2. On the receipt of the above reference it was registered as A.I.D. No. 18 of 1969 on the file of this Tribunal, and the first party was called upon to file the Claim Statement. Accordingly it put in its claim statement on 6th January 1969, and the second party put in its Counter Statement on 22nd October 1969, and thereafter the first Party put in its reply on 12th November 1969. In view of these contentions the following issues were raised on 15th December 1969 :—

I. Whether the total emoluments offered by the Second Party (Management) compare unfavourably with those in the same line of business ?

II. Should there be a revision of pay scales ?

III. Can the question of gratuity be gone into in this dispute also as the same is pending adjudication in A.I.D. 9/69 ?

IV What award ?

3. After the issues were framed the case was adjourned for evidence from time to time, and the First Party also gave an application for interim relief pending the disposal of the case, and after hearing both the parties an order was passed on 6th October 1970 awarding an Interim Relief of Rs. 100 per head to the members of the First Party Union Thereafter on 11th December 1970 both the parties filed a Memo with a settlement of the points of dispute between them, and they prayed that an Award may be passed in terms of the settlement, and they also admitted the contents thereof to be correct and as acceptable to both of them. The terms of the said settlement are quite reasonable and proper from the point of the interest of both the parties, and as such I do not see any objection to pass an award in terms of the same. Hence I pass the following Award :—

## AWARD

In view of the settlement filed by both the parties an award is passed in terms thereof, and the said settlement shall be treated as a part of this Award and shall be annexed to it. No order as to costs.

21-12-70

S. T. KULKARNI,
*Presiding Officer,*
*Additional Industrial Tribunal,*
*Bangalore.*